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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Review of the Pioneer's)
Preference Rules)

ET Docket No. 93-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS
OF
AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby supports the repeal of the pioneer's preference rules. The concept of rewarding innovation is laudable, but as is apparent from several of the comments that were filed in response to the Commission's Notice of Proposed Rule Making ("NPRM") in this proceeding, the continuation of the pioneer's preference rules has the perverse effect of adding delay and cost to the introduction of new technology and services.

The NPRM proposes to reevaluate the pioneer's preference rules in light of the Commission's new authority to use competitive bidding to assign licenses in cases in which there are mutually exclusive applications. The Commission asks whether the pioneer's preference rules should be repealed and, if not, how they might be amended.

This reply is directed principally at three of the comments that were filed in support of retaining the pioneer's preference rules: those filed by Celsat, Inc. ("Celsat"), Motorola Satellite Communications, Inc. ("MSCI") and Satellite CD Radio ("SCDR"). Each of these entities is itself an applicant for a pioneer's

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preference.^{1/} In response to the NPRM, they each propose the retention of the pioneer's preference.

Celsat claims that it would be unfair to rescind the pioneer's preference rules for pending applicants that came forward with their proposals in response to the opportunity for a preference and argues that the elimination of the preference will have a disproportionate impact on small businesses. MSCI contends that the pioneer's preference rules should continue to apply in the proceeding in which it is involved, since there is no mutual exclusivity among the applicants in the proceeding and, therefore, the Commission does not have jurisdiction to conduct an auction. SCDR argues that the Commission should grant preferences for regulatory perseverance and contends that the prospect of auctions bolsters the need for pioneer preferences. All three parties also use their comments to reargue the merits of their pioneer's preference requests.

AMSC's principal concern is that the pioneer's preference process has been a substantial waste of private and Commission resources in several proceedings in which AMSC has been involved.

^{1/} The MSCI request has been denied by the Commission. Notice of Proposed Rulemaking and Tentative Decision, 7 FCC Rcd 6414 (1992). MSCI subsequently urged the Commission to reconsider this decision.

AMSC or its affiliates have opposed each of these requests, largely on the grounds that none of the proposals is truly innovative. See, e.g., Opposition to Request for Pioneer's Preference, RM-7927 (April 8, 1992) (MSCI); Consolidated Opposition to Requests for Pioneer's Preference in ET Docket No. 92-28 (April 8, 1992) (MSCI); Supplemental Comments of AMSC, ET Docket No. 92-28 (June 12, 1992) (MSCI); Reply Comments of American Mobile Radio Corporation, Gen. Docket No. 90-357 (March 1, 1993).

In the proceedings in which Celsat and MSCI have been involved, there have been six different claims for pioneer's preferences. Celsat, which failed to file a timely application as part of the conventional licensing procedure, seeks to use the pioneer's preference rules to bypass the legitimate applicants. MSCI, persists in arguing for a pioneer's preference for its system, even after its proposal was rejected in a tremendously wasteful proceeding involving submission of confidential material requiring protective orders, the defense of Freedom of Information Act requests, and the convening of an independent panel of experts. SCDR, which has continually changed its proposal, seeks a pioneer's preference largely for what it claims is its perseverance.^{2/}

What all of these proponents of pioneer's preference have in common is that they have introduced claims for special treatment into the licensing process for new technology, claims which have met with substantial opposition on the merits and which have required that all parties to the proceeding, including the Commission, expend substantial resources debating something other than how best to provide service to the public. The processing of these claims also undoubtedly has delayed the ultimate resolution of the proceedings and the introduction of service.

The added cost and delay involved in processing pioneer's preference requests is particularly pointless in a proceeding in which there is no mutual exclusivity. In such a case, it is far

^{2/} Celsat and MSCI also have made major modifications to their original proposals.

better for the Commission to focus its resources on granting the applications as expeditiously as possible, so that the market can decide which technology will be deployed and which systems will be built.

As to Celsat's claim that repeal of the pioneer's preference rules will disadvantage small businesses, the Commission need look no further than MSCI to see that the availability of a pioneer's preference attracts large corporations as well as small businesses. Indeed, based on the current record of pioneer's preference requests, it is reasonable to expect that larger corporations will use their greater resources to make the pioneer's preference process, and therefore the entire licensing process, much more costly and time-consuming for all the other applicants. The pioneer's preference process in effect becomes one more extraneous issue that wealthier applicants can use as part of their litigation strategy.

The record to date in the pioneer's preference proceedings also has shown that there are few if any legitimately "new" services that an applicant might propose and that it is extremely difficult for the Commission to judge the extent to which a proposed technology is a significant innovation.^{3/} AMSC opposes SCDR's notion that entities should be rewarded simply for persevering in their efforts to secure a license to provide a new

^{3/} This latter process is much better left to the Patent Office. Indeed, both MSCI and Celsat claim that their innovations are backed by patented technology. If this is the case and their technology is truly superior, we can expect that they will be rewarded appropriately, even without a pioneer's preference.

service. Such a standard is extremely subjective. As discussed above, it is difficult for any one entity to hold a valid claim to a concept, such as satellite-delivered audio that is far from novel. Moreover, while one entity may have filed a petition for rulemaking to establish the service, others played a substantial role in supporting the process. For example, AMSC is the entity that first identified and proposed the allocation of the 2300 MHz band to satellite-based DARS. See Supplemental Comments of AMSC, Gen. Docket No. 89-554 (February 21, 1991). AMSC is also a long time supporter of satellite-delivered audio services generally. See Comments of AMSC, Gen. Docket No. 90-357 (November 13, 1990).^{4/} One applicant should not be permitted to take credit for the efforts of many.

^{4/} AMSC also has been a leading proponent of more spectrum for MSS systems, internationally and domestically, an activity that benefits Celsat and MSC1. Over the past few years, AMSC has spent millions of dollars supporting the domestic and international process of identifying and allocating new spectrum for the development of new satellite services.

Conclusion

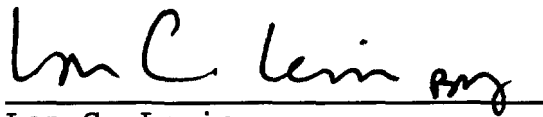
Therefore, based on the foregoing, AMSC Subsidiary Corporation hereby respectfully requests that the Commission repeal its pioneer's preference rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Leslie Anne Byers, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that I have this 22nd day of November, 1993, mailed copies of the foregoing "REPLY COMMENTS OF AMSC SUBSIDIARY CORPORATION" by first class United States mail, postage prepaid, to the following:

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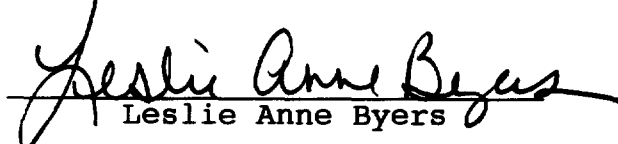
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